

LABOUR DEPARTMENT

The 27th September, 1994

No. 14/13/876-Lab./557.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Auto Meters Ltd., Faridabad *versus* Miss Veena :—

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 79/93

between

THE MANAGEMENT OF M/S AUTO METERS LTD., MATHURA ROAD, FARIDABAD

versus

I

II

THE WORKMAN, NAMELY, MISS VEENA KAKKAR, C/O SHRI AMAR SINGH SHARMA,
LABOUR UNION OFFICE, SSI, PLOT NO. 1-K/14, N.I.T., FARIDABAD*Present :*

Sh. Amar Singh Sharma, for the workman.

Sh. J. S. Siroha, for the management.

AWARD

In exercise of the powers conferred by clause (c) of section 17 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication, —*via* Haryana Govt. Encl. No. 44116/121, dated 10th November, 1987 :—

Whether the termination/retrenchment of services of Miss Veena Kakkar is justified and legal? If not, to whom relief, she is entitled to?

2. Briefly stated the case of the workman is that she was employed on 3rd January, 1982 as a Assembler on permanent job. Her last drawn salary was Rs. 583/-p.m. She had not provided any cause for complaint during her employment services. Her services were illegally terminated w.e.f. 22nd November, 1984 on a baseless ground that she had been absent for 15 days. She was not informed in a general about her illness. No charge sheet was issued to her. No notice was issued to her for terminating her services. She is thus, entitled to be re-joined in her services with full back wages.

3. The management submitted written statement dated 1st February, 1988 setting the record that the workman had failed to give notice of 15 days for terminating her services from duty for a period of more than 3 months. In view of illegal termination of services under the provision of clause (O) of the Certified Standing Order, it is covered under Section 2A of the Industrial Disputes Act and as such the reference made by the Government is bad law. It was also pleaded that the dispute raised by the workman is bad and hereby it is raised after lapse of 3 years from the date of the last wage. It was further pleaded that the filing of dispute is barred by the principle of estoppel as the workman in her complaint dated 11th May, 1987 had stated to the Labour Inspector that she is to have full and final settlement of her account. With regard to the other allegations of the workman, it was stated that the workman was employed as a learner w.e.f. 1st March, 1982 for a period of one year on a monthly stipend of Rs. 250/- 300/- per month. After completion of her training, she was appointed, *vide* letter dated 1st March, 1983 as a regular helper on probationary period, with the Certified Standing Orders. She was confirmed as helper w.e.f. 10th February, 1984. Her last drawn wages were Rs. 482.75/- p.m. It was further mentioned that she had started remaining absent w.e.f. 11th August, 1984 after the expiry of her sanctioned leave without wages, from 1st August 1984 to 10th August, 1984. She had remained absent for more than 3 months without intimation and without obtaining sanction of leave. The management was not bound to wait for her and treated her having left the services of the company under clause 9 (3) of the Certified Standing Orders. The management however, gave her one opportunity to report for duty through letter dated 26th November 1984. The workman admitted the receipt of this letter in her complaint dated 11th May, 1987 addressed to the Labour Inspector, Ballabgarh Circle, Faridabad. The management had not terminated her service and as such it was not necessary to issue any charge-sheet to her. Consequently, the workman is not entitled to any relief.

4. The workman submitted rejoinder dated 2nd March, 1988 re-asserting her previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed :—

1. Whether the reference is bad in law ?
2. Whether the present reference is liable to be dismissed on the ground of laches ? OPM
3. Whether the present dispute is barred by principle of estoppel ?
4. Whether the termination/retrenchment of services of Miss Veena Kakkar is legal and justified ? If not, to what relief, she is entitled to ? (As per reference).
5. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

Issue No. 1 :

8. It has been contended on behalf of the management that it is not disputed that the workman had been absent from duty w.e.f. 11th August 1984. She had not sent any application for the grant of leave to the management till 22nd November, 1984 as stated by MW-2 Attar Singh and MW-3 Smt. Vinay Sharma on oath. In this situation the name of the workman was struck off from the muster-rolls of the company w.e.f. 22nd November, 1984 through letter Ex W-1 as per provision in clause 9(b) of the certified standing orders which provides for automatic termination of service of a workman, who absent himself without leave for more than 7 consecutive days. The management had not terminated the services of the workman. The management had also not passed any order regarding the retrenchment of the workman. Thus, the case of the workman does not fall within the provision of Section 2A of the Act under which the State Government is competent to refer an industrial dispute arising out of the discharge, dismissal, retrenchment or otherwise the termination of services of workman by an employer.

9. To support this plea a reference has been made to the case of **M/s India Tourism Development Corporation, New Delhi versus Delhi Administration, Delhi and others** 1982 LAB. I.C. 1309 in which it was held that where the real dispute between the parties was whether there was lock out or closure in the establishment and the Government referred the dispute by assuming as there was lock out, the order of reference was liable to be interfered with as the Labour Court could not travel beyond the reference and decide the question as to whether there was a lock out. A reference has also been made to the case of **Sitaram Vishnu Shirodkar versus Administrator Government of Goa and others** 1984 II LLN 297 in which it was held that where the real dispute was whether the services of an employee were terminated or whether he had voluntarily abandoned job the reference made by the Government as to whether termination of service was legal was bad and had to be quashed.

10. On the other hand, it has been contended on behalf of the workman that the definition of the term "retrenchment" in Section 2 (oo) of the Act is comprehensive intended to cover any action of the management to put an end to the employment of any employee for whatsoever reason except those excluded in the section as held in the case between **D.K. Yadav versus JMA Industries Ltd.** 1993 FLR, 111, in this case, the management put an end to the employment of the workman through letter dated 22nd November, 1984 Ex. W-1 by striking of her name from the rolls of the company. The reference made by the Government is thus, proper and valid.

11. I do not find merit in the submission made on behalf of the management. Had the management not passed any order putting an end to the services of the workman then in that situation it could be taken that the reference made by the Government was bad in view of the law laid down in two cases referred to by the management's representative. The management passed the order dated 22nd November, 1984 striking of the name of the workman from the rolls of the company. It amounts to termination/retrenchment of services of the workman. The case is covered by the provision of section 2A of the Act. The reference is legal and valid. Issue No. 1 is decided against the management and in favour of the workman.

Issue No. 2 :

12. It has been contended on behalf of the management that the workman had left the service on 26th November, 1984. She however, served the demand notice on 9th July, 1987 after the expiry of about 3 years. The dispute raised by the workman is thus, barred by time and requires dismissal on this ground.

13. In reply, it has been contended on behalf of the workman that she stated on oath that she had been making efforts to prevail upon the management to take back her in service and served the demand notice when her efforts failed. Despite this there is no time limit fixed in the Act to serve the demand notice. That being so, the reference can not be rejected merely on the ground that it was filed at a belated stage. Moreover the order passed by the management is void. There is no time limit fixed for challenging a void order. Thus, the reference can not be rejected on account of delay in the service of demand notice.

14. To support this plea a reference has been made to the case of State of Punjab *versus* Ajit Singh 1988 (T SIR page 96 in which it was held that once the order is void, limitation would not apply.

15. A division bench of our own Hon'ble High Court has held in the case of the management of Haryana Urban Development Authority *versus* Miss Neelam Kumari and another 1993 (2) PLR 552 that since the Industrial Disputes Act, does not provide limitation for making a reference, or raising an industrial dispute or for deciding the industrial dispute, hence the provisions of Indian Limitation Act can not be imbibed into the provisions of Industrial Disputes Act, which by itself is a complete code. It has been further held that through delay or laches is not the ground by itself for striking down the reference which was concedingly an administrative action, inspite of this the Tribunal will be at liberty to mould the final relief. Keeping equity and good conscience, in view in the peculiar facts and circumstances of each case. The plea taken by the management can not be accepted in view of the law laid down in this case. Issue No. 2 is decided against the management and in favour of the workman.

Issue No. 3 :

16. It has been submitted on behalf of the management that the workman had submitted complaint dated 11th May, 1987 Ex. M-1 before the Labour Inspector alleging therein that she was not allowed to join duty on 9th November, 1984 when she visited the factory after being on leave due to sickness. She had also stated in this complaint that the management be directed either to allow her to resume duty or clear her full and final dues. It is clear from the report of the Labour Inspector dated 2nd June, 1987 Ex. M-2 that the management had offered the workman the payment of full and final dues but she had declined to accept the same. The workman was estopped from withdrawing her offer to take full and final dues. That being so, she is debarred from raising the dispute by the principle of estoppel.

17. In reply, it has been submitted on behalf of the workman that it is clear from the perusal of the complaint Ex. M-1 that the workman had made a conditional prayer for the payment of her full and final dues, in case the Labour Inspector was not in position to direct the management to allow her to resume duty. The workman had submitted application before Labour Inspector. The workman had not made unconditional offer to the management itself. The workman stated in her cross-examination that she had declined the offer of the management as the management had not offered her full amount due to her. In these circumstances, the workman was not estopped to raise the demand.

17-A. There is merit in the submission made on behalf of the workman. The workman had narrated her tale woe in complaint Ex. M-1 as to how she was not allowed by the management to resume duty when she had visited the factory along with the fitness medical certificate. She had also stated that the management be either directed to allow her to resume duty or to pay her upto date full and final dues. It is clear that she had made an alternative prayer in the complaint. She had not made un-conditional offer to the management. The management had not led any evidence to show as to how much amount was offered to the workman before the Labour Inspector. It can not be thus, accepted that the management had accepted the offer of the workman in toto keeping in view the statement of the workman that the management had not offered her the full amount due to her. In this situation, it is held that the workman was not estopped from raising the demand by serving demand notice as pleaded by the management. Issue No. 3 is decided against the management and in favour of the workman.

Issue No. 4 :

18. Two witnesses have been examined on behalf of the management. MW-2 Attar Singh deposed that the workman had been on leave from 1st August, 1984 to 10th August, 1984 and thereafter she had absented herself without any intimation to the management as per extract of attendance register Ex. M-6. Her name was struck off from the attendance register on 26th November, 1984 as she had neither intimated any thing about her absence nor had sent any leave application. He also placed on record Ex. M-7 a copy of the Certified Standing Orders of the company. In the end, he stated that since the workman had absented herself after 10th August, 1984, she would be deemed to have abandoned the service of her own accord. MW-3 Smt. Vinay Sharma personal officer deposed that no intimation was received from the workman after the expiry of her leave without pay on 10th August, 1984. This witness also placed on record failure report dated 31st August, 1987 Ex. M-10 submitted by the Labour-cum-Conciliation Officer, Ballabgarh to the Dy. Labour Commissioner, Faridabad along with the comments of the management submitted to him.

19. On the other hand, the workman examined herself on oath and her brother-in-law Raghbir Singh. She deposed the facts as mentioned in her claim statement. WW-2 Raghbir Singh deposed that he had handed over two applications supported by medical certificates for the grant of leave to the workman personally to one Sh. Batra of the management.

20. It has been contended on behalf of the management that it stands proved from the testimony of two witnesses referred to above that the workman had been on leave without pay w.e.f. 1st August, 1984 to 10th August, 1984. It also stands proved that the workman had not sent any application for the grant of leave after the expiry of her leave. Clause 9 (b) of the Certified Standing Orders provides that -

A workman who absents himself without leave for more than 7 consecutive days will be deemed to have left the service of the company of his own accord and in such case the employment will be automatically terminated and the company may or may not give any information to him about such termination. If the workman within four days after the expiry of period of 7 days offers an explanation to the satisfaction of the Manager, his absence may be converted at the sole discretion of the manager into leave without pay.

The workman had thus, left the service of the company of her own accord as per provision in the certified standing orders of the company. The management had however, after waiting upto 22nd November, 1984 informed her through letter Ex. W-1 that her name had been struck off from the rolls of company. She was also informed that she may collect her dues if any from the accounts department on any working day between 2 P.M. to 4 P.M. after submitted her clearance slip. The action of the management is strictly in accordance with the certified standing orders of the company which have statutory force. The management also complied with the provision of Section 25-F of the Act by directing her to collect her dues as mentioned above. Consequently, the workman is not entitled to any relief.

21. To support the aforesaid position, the authorised representative of the management referred to the case between Freewheels India Ltd. *versus* State of Haryana 1993 (4) LFR 210 in which the action of the management in similar circumstances was upheld. A reference has also been made to the case of M/S Exports Ltd., Faridabad *versus* Industrial Tribunal, Haryana, Faridabad and others 1983 LAB I.C. 223 in which it was held that certified standing orders have statutory force. Lastly reference was made to the case reported as Hari Singh *versus* The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and another 1993 FLR 385 in which the action of the company advising the workman to contact the office of the company during working day from 10 A.M. to 4 P.M. for collection his dues was held to be sufficient compliance of the Section 25-F of the Act.

22. In reply it has been contended on behalf of the workman that it stands proved from her statement coupled with medical certificate Ex. W-1 that she had been ill during the period from 1st August, 1984 to 8th November, 1984. This fact also finds support from the statement of WW-2 Raghbir Singh. Again she had stated so in her complaint dated 11th May, 1987 Ex. M-1. The management also not submitted any proof of the fact that the workman had been on leave without pay from 1st August, 1984 to 10th August, 1984. The plea of the management that the workman was on leave from 1st August, 1984 to 10th August, 1984 cannot be accepted. The other plea of the management also can not be accepted that no leave application supported by medical certificate was received by the management. It is clear that the name of the workman was struck off from the rolls of the company without affording an opportunity to the workman to explain the cause of her alleged absence from duty. The impugned action of the management is violative of principles of natural justice. The management had not offered retrenchment compensation to the workman through letter dated 26th November, 1984 Ex. M-1. That being so, the impugned action of the management is violative of the provisions of Section 25-F of the Act. Resultantly the workman is entitled to be reinstated into service with full back wages.

23. To support the aforesaid plea the authorised representatives of the workman has referred to the case of D.K. Yadav, *versus* JMA Industries Limited, 1993 FLR III 584 in which the action of the management of striking of the name of the workman from the rolls of the company on account of alleged absence without providing an opportunity to the workman to explain his position or holding enquiry was held to be violative of the principles of natural justice. A reference has also made to the case between Naresh Chandra Dutt, *versus* Seventh Industrial Tribunal, West Bengal, and others 1983 I page 179 in which it was held that termination of service, in terms of standing orders, for continued absence without leave is retrenchment within the meaning of Section 2(oo) and Section 25-F.

24. There is no dispute about the proposition of law laid down in the cases referred to by the authorised representative of the management that the certified standing orders have statutory force. The Hon'ble Supreme Court of India has made the following observations in the case of D.K. Yadav *versus* JMA Industries Limited, 1993 LLR 584 :-

"Striking of the name from the rolls for unauthorised absence from duty amounted to termination of service and absence from duty for 8 consecutive days amounts to misconduct and termination of service on such grounds without complying with minimum principles of natural justice would not be justified. It is settled law that certified standing orders have statutory force which do not expressly exclude the application of the principles of natural justice. It is a cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to Act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonably in the particular

circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily affecting the rights of the concerned person. An order involving civil consequences must be made consistently with the rules of natural justice. Principle of natural justice must be read into Standing order No. 13(2)(iv). Otherwise it would become arbitrary, unjust and unfair violating Art. 14. When so read the impugned action is violative of the principles of natural justice."

25. In the instant case, the management had not given any opportunity to the workman to explain the cause of her alleged absence from duty. The management did not conduct any enquiry into the matter and passed the impugned order dated 22nd November, 1984 Ex. W-1. The impugned order is thus, violative of the principles of natural justice referred to above:

26. It is also noticed that the workman had been taking consistent stand that she had submitted medical certificate in support of her illness prior to the passing of the impugned order. She categorically stated that she had visited the factory on 9th November, 1984 along with her medical-cum-fitness certificate Ex. W-2. The management could pass the impugned order during the months of September and October 1984 when the workman had been absent from duty as per their version. The management did not pass any order before 22nd November, 1984. This position shows that the management passed the impugned order when the workman reported for duty along with medical fitness certificates. This position also shows that the position taken by the workman that she had submitted medical certificate earlier is correct and more denial of two witnesses examined by the management is not correct.

27. The plea taken by the management that the compliance of provisions of section 25-F was made by advising the workman to collect her dues from the accounts department through letter dated 22nd November, 1984 Ex. W-1 is also not tenable. This observation is based on the ground that in the case of Hari Singh, versus P.O. Industrial Tribunal-Labour Court, Rohtak and another 1993 LLR 385, the management had advised the workman to contract the office of the company during the working day from 10.00 A. M. to 4.00 P.M. for collection of her dues etc. It was held that the offer made by the management was sufficient as nothing was brought out from the record that the amount offered was short than what he was entitled in terms of section 25-F of the Act. In the instant case, the workman was advised to collect her dues, if any, from the Accounts department on any working days between 2.00 P.M. to 4.00 P.M. after submitting her clearance slip. The words, "if any", used in this letter clearly show that the management had not offered to the workman the retrenchment compensation. The workman was offered the dues, if any, due to him in the form of the back wages etc. It can not be thus, taken to be the compliance of the provision of section 25-F of the Act.

28. For the reasons recorded above, it is held that the impugned action of the management striking of the name from the rolls of the company is illegal and unjustified. Consequently, the workman is entitled to be reinstated into service with continuity in service.

29. It has been vehemently urged on behalf of the management that the workman was not entitled to full back wages even if the action of the management is not upheld. This submission has been made on the ground that the workman herself had submitted demand notice on 9th July, 1987 after the expiry of about 3 years from the date on which her name was struck off from the rolls of the company. It has also been urged that an issue to this fact may also be framed to enable the management to lead evidence to prove that the workman had been gainfully employed. To support this position a reference has been made to the case between M/s. Daily Tej Private Limited versus Lieutenant Governor, Delhi, through Delhi Administration and others 1979 FLR(39) 302 in which it was held that the tribunal should frame an issue to determine as to whether the workman had remained unemployed or partly employed or otherwise not able to earn to decide the question of back wages. A reference has also been made to the case between B.R. Herman & West Bengal and others 1977 Lab. I.C. (NOC)13-p-6(Calcutta High Court) in which it was held that inordinate delay in making a reference cannot be made a jurisdictional ground before the Tribunal but the Tribunal may take into account the delay while granting relief lastly a reference was made to the case of the Executive Engineer irrigation division I Jaipur and Narnarayan in which it was held that the grant of back wages even from the date of termination could not be justified if the workman was guilty of delay and latches.

30. In reply, it was submitted on behalf of the workman that she clearly stated in her claim statement as well as in her statement made in the court she had been requesting the management continuously for a period of a 3 years to allow her to join duty but the management had been putting her off on one pretext or the other. The workman thus, can not be blamed for the delay in filing of the demand notice. She is entitled to full back wages.

31. The workman has stated in her claim petition that she had been regularly writing to the management to this effect but she has not placed on record any such letter. The workman is not an illiterate woman. She possesses degree of masters of Arts. She was expected to act promptly. Her bald version that she had

been approaching the management for reinstatement can not be accepted. It is thus, held that she is guilty of delay and laches in serving the demand notice to the management. Applying the ratio of the cases referred to by the management, the workman is not at all entitled to claim back wages for the period from 1st August, 1984 to 8th July, 1987. She is entitled to 50% of the back wages from 9th July, 1987 (date of submission of demand notice).

32. For the reasons recorded above, it is held that the termination/retrenchment of the workman effected by the management by striking of her name from the rolls of the company as referred to above is illegal and unjustified. The workman is entitled to reinstatement into service with continuity in service with 50% of the back wages w.e.f. 9th July, 1987. She may however, be not reinstated into service as the factory was closed on 31st August, 1993 as per unrebutted statement of Shri P.N. Diwedi, Authorised Representative for the management on oath. The period of 1st August, 1984 to 8th July, 1987 shall be treated as on leave without wages for the purpose of continuity of service. The award is passed accordingly.

The 29th July, 1994.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

Endorsement No. 2738, dated the 12th August, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to Government, Haryana, Labour Department, Chandigarh.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

No. 14/13/87-6Lab/558.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Financial-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Radhika Rubber Pvt. Ltd., Faridabad *versus* Harkesh.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-II, FARIDABAD.

Reference No. 298/88.

between

THE MANAGEMENT OF M/S RADHIKA RUBBER PVT. LTD., SECTOR-6, FARIDABAD.

versus

THE WORKMAN NAMELY SHRI HAREKSH C/O A. I. T. U. C., OFFICE, MARKET NO. 1., N.I.T., FARIDABAD.

Present :

None.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above to this court for adjudication,—*vide* Haryana Government, Endorsement No. 50456-61, dated the 7th December, 1987:—

Whether the termination of services of Shri Harkesh is legal and justified. If not, to what relief, is he entitled to ?

2. The case of the workman is that he had been working with the management with effect from the 15th September, 1985 to 20th June, 1987. His services were illegally terminated without any reason, issuance of charge-sheet and payment of compensation etc. He is entitled to be reinstated into service with full back wages and continuity of service.

3. The management submitted written statement dated 8th November, 1988 stating therein that the workman was never appointed in June, 1983. With regard of termination of services of the workman, it was submitted that his services were terminated with effect from the 13th February, 1988 along with other casual/temporary workers as the company had been running in heavy continuous loss due to 60% power cut imposed by the Haryana State Electricity Board.

4. The workman submitted rejoinder dated the 13th February, 1989 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues was framed :-

1. Whether the termination of services of Shri Harkech is legal and justified ? If not, to what relief, is he entitled to ? (As per reference).

6. The management examined one witness MW-1 Rakesh Kumar, Manager and he deposed that the workman was appointed as casual worker on the 1st March, 1987 through appointment letter Ex. M-1. His services were terminated on the 21st June, 1987. He also produced a copy of muster rolls Ex. M-2 for the period from March, 1987 to June, 1987.

7. The management sought several adjournments to lead remaining evidence but failed on the 29th March, 1994. None appeared for the management and as such it was ordered that the management be proceeded against *ex parte*. The case was then adjourned to 2nd August, 1994 for evidence of the workman. The workman availed three opportunities to leave evidence but failed.

8. Today none is present on behalf of the workman. In the circumstances, the case has to be decided on the basis of evidence on record. As mentioned above, the management has led evidence to the effect that the workman was appointed on the 1st March, 1987 through letter Ex. M-1 and his services were terminated on the 21st June, 1987. There is no evidence from the side of the workmen that he was appointed on the 15th September, 1985. It is, thus, held that the workman had not rendered service for a period of 240 days prior to the termination of his service. The termination of services of the workman by the management is thus legal and valid. The workman is not entitled to any relief. The award is passed accordingly.

U. B. KHANDUJA,

Dated the 2nd August, 1994.

Presiding Officer,
Industrial Tribunal-II,
Faridabad.

Endorsement No. 2730, dated the 12th August, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Industrial Tribunal-II
Faridabad.

No. 14/13/87-6Lab./562.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Tryshoera India, Pvt. Ltd., Faridabad *versus* Rajinder Singh.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD.

Reference No. 472/93.

between

THE MANAGEMENT OF M/S TRYSHOERA INDIA (P) LTD, PLOT NO 32, SECTOR-6,
FARIDABAD.

versus

THE WORKMAN NAMELY SHRI RAJINDER SINGH, C/O HIND MAZDOOR SABHA, 29, SAHID
CHOWK, FARIDABAD.

Present :

Shri B. L. Gupta, for the workman.
None for the Management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government Endorsement No. 10256—61, dated the 24th February, 1992 :—

Whether the termination of services of Shri Rajinder Singh is legal and justified. If not, to what relief, is he entitled to ?

2. The case of the workman is that he was employed with the management on 15th May, 1983 and his last drawn wages were Rs. 944.50. He had not provided any cause of complaint regarding his work to the management. On the 26th April, 1991 the management had issued notice that the factory had been closed due to non-cooperation of the workmen and the services of all the workmen stood terminated. This was done by the management as the union of the factory had given a joint demand notice dated the 26th February, 1991. The management had started getting the work done from the contractors. On the other side pressure was put on the union for settlement as was done earlier in the year, 1989. The management also got the matter settled with certain workman through settlement under section 12 (3) of the Act. The management had been running the factory with the help of the contractors and as such the complaint was made to the Labour Inspector. The Labour Inspector inspected the factory and had found the contractor working for the management. Thus, the termination of services of the workman effected by the management in the garb of closure of the factory is illegal, against the provisions of the Act and violative of rules of natural justice. Consequently, the workman is entitled to be reinstated into service with continuity in service and with full back wages.

3. The management appeared and submitted written statement dated 27th July, 1992 stating therein that the Government had made a reference without applying its mind. The factory had been closed with effect from the 26th April, 1991 and all the employees were accordingly removed from services. The factory had been closed due to shortage of orders and financial crisis. Moreover the management had to vacate the rented premises to obey the order of Hon'ble High Court. All the workers had collected full and final dues before the Labour-cum-Conciliation Officer, Sector-7, Faridabad. The workman has raised the dispute just to blackmail the management and as such the workman is not entitled to any relief.

4. The workman submitted rejoinder dated 24th November, 1992 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed on the file titled as *Ved Ram Versus Tryshoera (Reference No. 144/92,)* Faridabad.

1. Whether the reference is not maintainable in view of preliminary objection ?
2. As per terms of reference.

6. It may be added that this case was consolidated with the above mentioned case of *Ved Ram Versus Tryshoera Reference No. 144/92* and was fixed up for evidence of the management. The management could not lead evidence till this case was transferred from Labour Court Gurgaon to this court. It was separated on the request of the parties.

7. The management sought several adjournments to lead evidence. On the 4th March, 1994 none appeared on behalf of the management and it was thus ordered that the management be proceeded against *ex parte*.

8. The workman has examined himself on oath and has stated facts mentioned above.

9. I have heard Shri B. L. Gupta authorised representative of the workman and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

Issue No. 1 :

10. There is no evidence from the side the management to prove the contention on the basis of which this issue was framed. Consequently Issue No. 1 is decided against the management and in favour of the workman.

Issue No. 2 :

11. The workman has stated on oath that he was employed by the management as Machine Operator with effect from the 15th May, 1983 and had worked upto 26th April, 1991. It is thus, clear that the workman had rendered service for a continuous period of more than 240 days preceding on the date

of termination of his services. The management has not led any evidence to show that the factory was closed as per law and the workman was offered compensation required to be paid to him. The management has also not led any evidence to prove that the workman had settled his claim with the management. Keeping in view this position, the termination of services of the workman by the management is illegal and unjustified. Consequently, he is entitled to be reinstated into service with full back wages and continuity in service. Issue No. 2 is decided against the management and in favour of the workman.

12. For the reasons recorded above, it is held that the termination of services of the workman by the management is illegal and unjustified. The workman is entitled to be reinstated into service and continuity in service with full back wages. The award is passed accordingly.

U. B. KHANDUJA,

Dated the 27th July, 1994.

Presiding Officer,
Labour Court-II
Faridabad.

Endorsement No. 2563, dated the 29th July, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government Haryana, Labour Department, Chandigarh

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6Lab./563 In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of presiding Officer, Industrial Tribunal-Jam-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Nanak Dairy Plant, Hodal, Faridabad *Versus* D. K. Bansal.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD.

Reference No. 85/87.

between

THE MANAGEMENT OF M/S NANAK DAIRY PLANT, HODAL FARIDABAD.

versus

THE WORKMAN NAMELY DECEASED SHRI D. K. BANSAL THROUGH HIS LR'S SMT. SHANTI BANSAL WIFE OF LATE SHRI D. K. BANSAL 2. TRILOK BANSAL 3. HEMANT BANSAL, SONS, 4. SUMAN MAHajan DAUGHTER 5. SAVITA BANSAL 6. SEEMA AGGARWAL C/O ANTRARASTRIYAVADI MAZDOOR UNION G-162, INDRA NAGAR, SECTOR-7, FARIDABAD.

Present:

Shri Jawahar Lal for the workman.

Shri Satish Kaushik for management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government Endst. N. 4943-48, dated 3rd February, 1987:—

Whether the termination of services Shri D. K. Bansal is legal and justified ? If not, to what relief, is he entitled to ?

2. The case of the deceased worker as embodied in the claim statement is that he was appointed as helper by the respondent management 1st June, 1984 and his last drawn wages, Rs. 460 p.m. The management used to do unfair labour practice. The management did not provide legal facilities to the workman. The management also took signatures of the workman on blank papers and other papers he had made complaint to the Labour Inspector and other authorities. The union had also filed complaint to the Labour Department. The management felt annoyed and illegally terminated his service on 4th September, 1987 without following the provisions of Model Standing Orders. He is thus, entitled to be reinstated in to service with full back wages.

3. The management submitted written statement, dated 13th May, 1987 stating therein that the workman had joined service of the management on 1st December, 1985 as a temporary helper on probation for one year. His last drawn salary was Rs. 440/- p.m. After following the workman to join duty, it appeared to the management that the workman was overage and as such he was asked to furnish proof in respect of age. The workman had started remaining absent from duty with effect from 2nd September, 1986 instead of furnishing proof in respect of his age. The management had appeared before the Labour Inspector and had given a letter advising the workman to join duty with proof of his age. The workman did not comply with the orders. The management did not terminate the services of the workman and as such the reference is bad. The workman has also been gainfully employed. The allegation of the workman that his services were terminated on account of his trade union activities was denied. It was also account specifically mentioned that there was no union in the factory at the relevant time.

4. The workman submitted rejoinder, dated 1st June, 1987 reasserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed:—

1. Whether the reference is bad as alleged ?
2. Whether the workman is gainfully employed ?
3. As per reference ?

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under:—

Issue No. 1 & 23:

8. Both of these issues are interlined and as such are discussed together.

9. The management has examined only one witness MW 1 Ram Lubhaya, Accountant, and he deposed that the workman had joined the service of the management on 1st December, 1985 as helper. He was physically weak and therefore the management had asked him to submit his age certificate. The workman had been asked many times to produce the age certificate but he did not submit. The workman had started remaining absent from duty with effect from 2nd September, 1986. On 20th September, 1986 a letter Ex. M-1 was written to the workman to join duty and produce the age certificate. He further stated that the workman had filed a complaint before the Labour Inspector and the management had appeared before the Labour Inspector. The Labour Inspector had directed the workman to produce the certificate. Then the workman had served demand notice. In the end, he stated that the management had directed the Certifying Surgeon through letter Ex. M-2 to medically examine the workman and issue certificate regarding his age. A copy of this letter was sent the workman through registered post as per receipt Ex. M-3 to appear before the Certifying Surgeon for medical examination but the workman had not obtained the certificate. He concluded his statement by saying that the workman was never removed from the other service by the management.

10. On the other hand, the workman examined himself on oath and deposed facts as mentioned in his claim statement. He also placed on record documents Ex. W-1 to Ex. W20 in support of his contention. The cross-examination of the workman was however deferred. It is on record of the file that the workman had appeared twice for his cross-examination but it was deferred on the request of AR for the management. Unfortunately, the workman expired on 3rd May, 1993 and as such he could not be cross-examined. The LR's of the workman closed the evidence without leading any evidence.

11. The case of the workman is that he was appointed on 1st June, 1984 as helper and his last drawn wages were Rs. 460 per month. On the other hand, the case of the management is that the workman was appointed on 1st December, 1985. MW-1 Ram Lubhaya admitted in his cross-examination that no application letter was issued to the workman as the management had started issuing appointment

letters to the workman from 1987. This witness also admitted in his cross examination that ESI was not applicable to the management. This witness further more admitted in his cross-examination that wage slips were not given to the workman in the year 1985-86. It is thus, a clear that the management resorted to unfair labour practice to deprive the workman of benefits accruing to him due to length of his service. The management has not produced any documents to show that the workman was appointed on 1st December, 1985. In these circumstances, it has to be taken that the workman was appointed on 1st June, 1984 and his last drawn salary was Rs. 460 per month.

12. It is the case of the management itself that the workman had worked upto 1st September, 1986. The management had not produced any record to show that the workman had been absent from duty during the period of his service or that he held been without job due to any other reason. It is thus, clear that the workman had rendered continuous service for a period of 240 days prior to 1st September, 1986. This position reveals the plea taken by the management that the workman had not rendered service for a period of 240 days prior to 2nd September, 1986.

13. It is the case of the management that the workman had been absent from duty with effect from 2nd September, 1986 and that the management had not terminated the service of the workman. MW-1 Ram Lubhaya also confirmed their position on oath. This witness MW-1 Ram Lubhaya however demolishes the case of the management by admitting in cross examination that the name of the workman was struck off the rolls of the company in the month of December 1986. Thus, it can not be taken that the management had not terminated the services of the workman as the striking of name of the workman from the rolls of the company amounts to termination of services. It is thus, held the plea taken by the management that the reference is bad in law as the services of the workman were not terminated by the management is not tenable.

14. It has been held by the Apex Court in the case of *D. K. Yadav versus JMA Industries Ltd.*, 1993 FLR III that it is well settled law that the order of termination of the service of the workman visits with civil consequences of jeopardising not only his livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of the workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In the instant case, the management had not been placed on record any document to show that opportunity was given to the present workman before striking his name from the rolls of company. A letter through which the name of the workman was removed from the rolls of the company has also not been placed on file. The management can not justify its action on the basis of letter, dated 22nd September, 1986 Ex. M-1 and letter, dated 15th October, 1986 Ex. M-2 because in these two letters, it was not mentioned that the management shall remove his name from the rolls of the company if he failed to resume duty along with certificate regarding his age. It is thus, clear that the impugned action of the management of terminating the service of the workman by striking of his name from the rolls of the company is illegal and unjustified being against the principles of natural justice.

15. Shri S. K. Kaushik, authorised representative of the management vehemently urged that is in clear from letter Ex. M-1, Ex. M-2 and the reply submitted by them before the Labour-cum-Conciliation Officer as contained in Ex. W-8 that the workman himself had not come to attend to his duty after 2nd September, 1986 along with certificate of certifying surgeon of factory regarding his age. It is also clear from the registration certificate Ex. W-12 that the Dairy Mazdoor Union, Faridabad was registered on 28th February, 1989 and as such there was no registered union in the year 1986. That being so, the plea taken by the workman that he was not allowed to resume duty on account of his trade union activity of filing complaint is not correct. In these circumstances, the management was justified to remove the name of the workman from its rolls on account of his continued absence from duty.

16. The aforesaid plea of the management can not be accepted for two reasons. Firstly that it was the duty of the management to give an opportunity to the workman to explain his case before passing the impugned order as discussed above. Secondly, it is clear that the management itself has been resorting to unfair labour practice of not issuing appointment letters and wage slips etc. In these situation, it can be safely concluded from complaint dated 29th August, 1986 Ex. W-4 that the present workman along-with other workman had been making complaints to the labour department that the management was resorting to unfair labour practice. Thus, possibility of the management taking the impugned action against the workman with the *mala fide* intension can not be ruled out. Issues No. 1 and 3 are decided against the management and in favour of the workman.

Issue No. 2:

17. The management has not led any evidence to show that the workman has been gainfully employed. Issue No. 2 is decided against the Management and in favour of the workman.

18. For the reasons recorded above, it is held that the impugned action of the management terminating the services of the workman by striking off his name from the rolls of the company is illegal and unjustified. Consequently the workman was entitled to be reinstated into service with continuity in service and full back wages. Since the workman expired on 3rd May, 1993 his L.R.'s named above in the title are entitled to full back wages and other benefits upto 3rd May, 1993. The award is passed accordingly.

U. B. KHANDUJA,

The 11th August, 1994.

Presiding Officer,
Labour Court-II,
Faridabad.

Endst. No. 2733, dated 12th August, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6Lab./568 In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, (Central Act No XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Chief Administrator, Faridabad Complex Administrator, Faridabad *versus* Chatar Singh :—

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER,
LABOUR COURT-II, FARIDABAD.

between

THE MANAGEMENT OF M/S CHIEF ADMINISTRATOR, FARIDABAD COMPLEX
ADMINISTRATOR, FARIDABAD.

versus

THE WORKMAN NAMELY SHRI CHATAR SINGH, C/O SHRI B. M. GUPTA, E-1668,
FEROZ GANDHI NAGAR, FARIDABAD.

Present :

Shri B. M. Gupta, for the workman.

None for the Respondent.

AWARD

In exercise of the powers conferred by clause(c) of sub-section(i) of section 10 of the Industrial Disputes Act, 1947, (hereinafter referred to as, 'the act'), the Governor of Haryana referred the following dispute between the parties, mentioned above, to this court for adjudication,—*vide* Haryana Government Endorsement No. 4175—80, dated 4th February, 1994:—

"Whether the termination of service of Shri Chatar Singh is legal & justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he was appointed by the Respondent as E Beldar on 1st June, 1984. He was getting salary of Rs. 405 per month. He had completed 240 days of his service. There was no complaint against his work and conduct. He was not served with any charge sheet. No warning was ever conveyed to him. There has no enquiry regarding his any misconduct. His services were however illegally terminated without payment of retrenchment. He submitted many letters to the Respondent but no reply was given to him. It is a clear case of victimization, harassment and unfair labour practice. He is thus, entitled to be reinstated into service with continuity in service and full back wages.

3. Notice was sent to the Respondent. Shri Nafe Singh appeared for the respondent. However, none appeared on behalf of the respondent on the next hearing. It was thus, ordered that the respondent be proceeded against *ex parte*.

4. The workman had examined himself in *ex parte* evidence.

5. I have heard the authorised representative of the workman and have also gone through the statement of the workman made on oath.

6. The workman has stated in the demand notice as well as in the statement made on oath that he was appointed by the respondent in June 1983. He had not indicated the date on which his services was terminated either in the demand notice or in the claim statement. He made a waiving statement on oath. He firstly stated that his service was terminated on 1st June, 1984. and then stated that his service was terminated on the 1st November, 1984. He had served demand on 8th October, 1992. He has not clarified any where as why he gave demand notice after the expiry of long period of about eight years. He did not state on oath categorically that he had rendered service for a continuous period of more than 240 days in a calendar year before termination of his service. In this situation, it can not be concluded from the statement of the workman that his service was terminated in violation of the provision of section 25-F of the Act. Simultaneously it can not be presumed without any reply or evidence from the side of the respondent that the termination of service of the workman by the respondent was legal and justified.

7. In the circumstances mentioned above the court is left with no option but to pass no claim award & it is passed accordingly

U. B KHANDUJA.

The 1st August, 1994.

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No 2757 dated 22nd August, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to the Government Haryana, Labour Department Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6Lab./569.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad respect of the dispute between the workman and the management of M/s Rana Textile Weaving Mills, Faridabad *versus* Nand Lal.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD

Reference No. 193/88.

between

THE MANAGEMENT OF M/S RANA TEXTILE WEAVING MILLS, PLOT NO. 61, SECTOR-6,
FARIDABAD

versus

THE WORKMAN NAMELY SHRI NAND LAL, C/O SHRI AMAR SINGH SHARMA, LABOUR UNION OFFICE, OPP. GOVERNMENT MIDDLE SCHOOL, NO. 1, N. I. T., FARIDABAD.

Present :

Shri Satish Kaushik for the workman.

Shri Satish Ahuja, for the Management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, (hereinafter referred to as 'the Act), the Governor of Haryana referred the following dispute between the parties mentioned above, to this Court for adjudication,—*vide* Haryana Government Endorsement No. 22730—35, dated the 15th June, 1987:—

Whether the services of Nand Lal were terminated or he had lost lien on the job having been absent from duty ? The relief, to which he is entitled as result thereof ?

2. The case of the workman is that he was employed with the respondent management on the 14th May, 1981 as a operator on printing machine. It was a permanent job. He was paid Rs. 461 P. M. which was less than the minimum wages. He demanded minimum wages fixed by the Government. The management felt annoyed and forced him to tender resignation but he refused to do so. On 28th February, 1987 the management stopped him from attending to his duty. The termiration of his services effected in this manner is illegal and against the provisions of I. D. Act. He is thus, entitled to be reinstated into service with continuity in service and with back wages.

3. The managament submitted written statement dated the 4th December, 1987 stating thereis that the reference is bad in law. The workman had resigned from service and had taken his full and final dues on the 12th February, 1987. He is thus, estopped to raise the dispute. He is also gainfully employed. It was also stated that the workman was employed in January, 1987 and was getting Rs. 500 p. m. He had hardly worked 1 1/2 months. The workman is not at all untitled to any relief.

4. The workman did not file rejoinder. However, the following issues were framed :—

- (1) Whether the workman has resigned from service and has taken his full and final dues on settlement of his claim as alleged ?
- (2) Whether the services of Nand Lal were terminated or he had lost lien on the job having been absent from duty ? The relief, to which he is entitled as result thereof ? (As per reference).
- (3) Whether the reference is bad in law ?
- (4) Whether the workman is gainfully employed ? OPM

5. I have heard the authorised representative s of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

Issues No. 1, 2, & 4 :

6. These three issues are interlinked and as such are discussed together.

7. The management has examined two witnesses. MW-1 S. K. Talwar time keeper deposed that as per record the workman was employed with the manegement on the 1st January, 1987 and he had worked upto 11th February, 1987. He further stated that he could identify the signatures of Shri Anand Sharma the then incharge Printing Department at point 'A' on the resignation Ex. M-1 as he had been working with him for a period of 2 1/2 years. MW-2 Kharag Singh, chowkidar deposed that the present workman had worked with the management as helper for about 1 1/2 months. The workman had submitted his resignation and he was paid Rs. 869.80 on full and final settlement in February, 1987 in his presence. The workman had affixed his signatures on the voucher Ex. M-2 in his presence. He had also appended his signatures on the said voucher.

8. On the basis of aforesaid evidence, it has been submitted on behalf of the management that it stands proved the workman had voluntarily tendered resignation Ex. M-1 dated 10th February, 1987 and had received full and final dues through receipt Ex. M-2 and so the workman is not entitled to any relief.

9. To support the aforesaid position, the authorised representative of the management referred to the decision in the case between the management of Northern India Theaters and Presiding Officer, Labour Court, Delhi and another 1975 LLJ (1) 235 in which it was held that the settlement covered all claims of workman whatsoever and did not leave any scope for any future dispute for claim to arise. He also referred to the case of M/s J. K. Cotton Spg. & Wvg. Mills Company Ltd., Kanpur, *versus* State of U. P. and others 1990 LIC 1511, in which it was hold that the acceptance of resignation of a workman by the management does not amount to retrenchment.

10. On the other hand, the workman examined himself on oath and deposed that he was appointed as operator printing in the year, 1980 on the salary of Rs. 461.50. He was issued ESI card by the company dated 14th May, 1981 Ex. W-10. He was however, not given any appointment letter at the time of appointment. The management had got his signatures on blank papers and vouchers during his service. He was not paid any compensation at the time of termination of service. He also placed on record attendance cards Ex. W-1 to Ex. W-8 and copy of failure report Ex. W-9 submitted by the Labour-cum-Conciliation Officer to the Government.

11. On the basis of aforesaid statement, it has been submitted on behalf of the workman that it stands proved from attendance cards Ex. W-1 to Ex. W-8 and ESI card Ex. W-10 that the workman was employed in the year 80 and was issued ESI card Ex. 10 on the 14th May, 1981 and that he had been working till 22nd February, 1987. The plea taken by the management that the workman had tendered resignation and had accepted full and final dues is an afterthought. The management had appeared before Labour-Cum-Conciliation Officer on the 30th April, 1987 and had not taken this plea that the workman had tendered resignation. It is evident from the failure report submitted by the Labour-cum-Conciliation Officer dated the 30th April, 1987 Ex. W-9 that the management had taken the plea that they had not terminated the services of the workman and that he himself was absent from duty. Thus, it is clear that the alleged resignation and the voucher regarding payment of full and final dues are fabricated documents which were fabricated by the management on the blank papers and blank vouchers got signed by the management. In these circumstances, it may thus be held that the management had terminated the services of the workman illegally without any justification and he is entitled to be reinstated into service with continuity in service and full back wages.

12. It is observed from the evidence on record that the management has not come to the court with clean hands. The case of the workman is that he had served the management for a period of about 5 years from the 14th May, 1981 to 28th February, 1987. As against this version the plea of the management is that the workman had worked for a period of only one and half months with effect from the 1st January, 1987 to 12th February, 1987. The management has examined two witnesses. MW-1 S. K. Talwar simply deposed that the workman was employed by the management on 1st January, 1987. He had not produced the attendance registers and a payment of wages registers for the period from the 1981 to 1986 although he admitted that these registers were in their possession. MW-2 Kharag Singh chowkidar deposed that the workman had worked only for 1 1/2 months but in cross examination he stated that he had stated so on the basis of his memory. In reply to other question he failed to tell the working period of other workers except one Suresh.

13. On the other hand, the workman confirmed his version on oath. He also confronted MW-1 S. K. Talwar with attendance cards Ex. W-1 to Ex. W-8 and S. K. Talwar admitted that the same were issued by their factory. The perusal of these attendance cards clearly shows that the workman had been on the rolls of the company during the months of November, 1984 May, 1985 February, 1986, April, 1986 to June, 1986, June 1987 and September 1987. The workman has also placed on record ESI identity card dated the 14th May 1981 Ex. W-10. These documents coupled with the statement of the workman on oath establishes that the version of the workman and falsify the stand of the management.

14. There is also merit in the submission made on behalf of the workman that the plea taken by the management that the workman had tendered resignation and had accepted full and final dues is an afterthought. The plea of the workman finds support from the fact that the management had not taken this plea before the Labour-cum-Conciliation Officer as referred to above. It also appears from the order of reference itself that the management had taken the plea before the Government that the workman had been absent from duty and as such had lost lien on the job. Apart from this, the management has not clarified either in the written statement or in the evidence as to why the position regarding submission of resignation by the workman on 10th February, 1987 and acceptance of full and final payment on 12th February, 1987 was not brought to the notice of the Labour-cum-Conciliation Officer on 30th April, 1987. The management has also not clarified as to how the plea that the workman had been absent from duty was taken before the Labour-cum-Conciliation Officer.

15. It also needs mention that it is also not proved from the evidence led by the management that the workman had actually tendered the resignation and had accepted full and final dues. This observation is based on the ground that MW-1 S. K. Talwar simply identified the signatures of the Anand Sharma at point A on the alleged resignation Ex. M-1. This witness did not state that the workman had tendered resignation Ex. M-1 in his presence. He admitted in his cross examination that he did not know as to who had written the resignation. MW-2 Kharag Singh also clearly stated that the workman had neither submitted resignation in his presence nor had appended his signatures in his presence. That being so, it can not be taken that the contents of the resignation Ex. M-1 are proved from the statement of these two witnesses.

16. The management has examined MW-2 Kharag Singh to prove that the payment of Rs. 869.80 as full and final dues was made to the workman in his presence. The statement of this witness however, does not inspire confidence on being true. This observation is based on the ground that this witness admitted in his cross examination that he had been asked by the management to witness the factum of such like payments in the cases of other workers too. Besides this witness admitted that the revenue stamp was not affixed on the receipt Ex. M-2 in his presence. He stated in his cross examination that payment voucher Ex. M-2 was filled in by accountant Shri Anil Jain. The perusal of the payment voucher Ex. M-2 however shows that it does not bear the signatures of the accountant. The signatures of the workman are also not on the revenue stamp and the same are below the revenue stamp. This position creates serious doubt about the genuineness of the voucher Ex. M-2 and tilts the balance in favour of the version of the workman that these documents that is resignation Ex. M-1 and payment voucher Ex. M-2 were prepared by the management on the blank paper and blank voucher got signed from the workman.

17. It appears sufficient to add that in view of the aforesaid actual position regarding the alleged resignation Ex. M-2 and payment voucher Ex. M-2 the law laid down in the cases referred to by the authorised representative of the management mentioned in page 9 of this judgement does not apply.

18. It emerges from the position discussed above that the workman had rendered service for a continuous period of about five years before 27th February, 1987. His services could not be terminated without payment of retrenchment compensation envisaged under section 25-F of the Act. Admittedly the workman was not paid retrenchment compensation. The management thus, terminated the services of the workman illegally without any justification. Consequently, the workman is entitled to be reinstated into service with continuity in service. The management has not led any evidence to show that the workman is gainfully employed. The workman himself stated on oath that he has been unemployed since the date of termination of his services. The workman is thus, entitled to full back wages. Issue No. 1, 2 and 4 are decided against the management and in favour of the workman.

Issue No. 3 :

19. It has been contended on behalf of the management that the management had taken the simple plea before the Labour-cum-Conciliation Officer that the workman had been absent from duty. The management had not taken the plea that the workman had lost lien on the job having remained absent from duty. Thus, the reference made by the Government, in this regard as to whether the workman had lost lien on the job by having remained absent from duty, is bad in law.

20. The bald plea of the management can not be accepted as management did not take a specific plea in the written statement that the workman had been absent from duty. The management came out with a new plea in the written statement that the workman had resigned. This plea of the management has been considered in reply to the plea raised by the workman that his service has been illegally terminated. Otherwise this plea of the management regarding tendering of the resignation by the workman could not be considered being beyond the scope of reference. Viewed in these circumstances, it is held that the reference is not bad in law. Issue No. 3 is decided against the management and in favour of the workman.

21. For the reasons recorded above it is held that the management illegally terminated the services of the workman without any justification and that the workman had not lost lien on the job having remained absent from duty. As sequel to this finding the workman is entitled to be reinstated into service with continuity in service and full back wages. The award is passed accordingly.

U. B. KHANDUJA,

The 12th August, 1994.

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 2768, dated the 23rd August, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.